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ALLIANCE RESIDENTIAL COMPANY, LLC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ALLAN DOHERTY, an individual,

Plaintiff,

vs.

ALLIANCE RESIDENTIAL COMPANY,  
LLC.; DOES I through X; and ROE  
Corporations XI and XX, inclusive,

Defendants.

Case No.

**NOTICE TO FEDERAL COURT OF  
REMOVAL OF CIVIL ACTION FROM  
STATE COURT**

**(28 U.S.C. §§ 1331, 1332, 1367, 1441, AND  
1446)**

**(FEDERAL QUESTION AND DIVERSITY)**

TO CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA:

Please take notice that Defendant ALLIANCE RESIDENTIAL COMPANY, LLC (“Alliance”), hereby removes this action from the Eighth Judicial District Court in and for Clark County, Nevada, to this Court under 28 U.S.C. §§ 1331, 1332, 1367, 1441, and 1446. Alliance seeks this timely removal on the bases of the Court’s federal question, diversity, and supplemental jurisdiction. In support of this Notice of Removal, Alliance make the following statement:

1. On November 16, 2020, Plaintiff ALLAN DOHERTY (“Plaintiff”) filed a Complaint with Jury Demand (the “Complaint” or “Compl.”) in the Eighth Judicial District Court in and for Clark County, Nevada, entitled *Allen Doherty v. Alliance Residential Company, LLC* (Case No. A-20-824817-C). A true and correct copy of the Complaint is attached here as **Exhibit 1**.

2. Alliance first received a copy of the initial pleading setting forth the claims for relief in this matter on January 29, 2021, when Plaintiff effected service of the summons and Complaint on

1 Alliance. A true and correct copy of the summons is attached here as **Exhibit 2**. A true and correct  
 2 copy of the proof of service is attached here as **Exhibit 3**. Because Alliance seeks removal within 30  
 3 days January 29, 2021, this Notice of Removal is timely. *See* 28 U.S.C. § 1446(b)(1).

4 3. Plaintiff alleges four causes of action in his Complaint: (1) Disability  
 5 Discrimination/Harassment under 42 U.S.C. § 12101 *et seq.* and NRS 613.330; (2) Retaliation under  
 6 42 U.S.C. §§ 12101 *et seq.* and 12203 and NRS 613.340; (3) Negligent Hiring, Training, and  
 7 Supervision; and (4) Luring under False Pretenses under NRS 613.010. (Compl. ¶¶ 38–70.)

8 4. The Court has original jurisdiction over “all civil actions arising under the Constitution,  
 9 laws, or treaties of the United States.” 28 U.S.C. § 1331 (federal question). In addition, the Court has  
 10 supplemental jurisdiction “over all other claims that are so related to claims in the action within such  
 11 original jurisdiction that they form part of the same case or controversy under Article III of the United  
 12 States Constitution.” 28 U.S.C. § 1367(a). “A state law claim is part of the same case or controversy  
 13 when it shares a ‘common nucleus of operative fact’ with the federal claims and the state and federal  
 14 claims would normally be tried together.” *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004)  
 15 (citations and internal quotation marks omitted). The Ninth Circuit has explained that the exercise of  
 16 supplemental jurisdiction is mandatory “unless a court properly invokes a section 1367(c) category.”  
 17 *Executive Software v. Dist. Court*, 24 F.3d 1545, 1556 (9th Cir. 1994); *see* 28 U.S.C. § 1367(c)  
 18 (providing that a district court may decline supplemental jurisdiction only if (1) “the claim raises a  
 19 novel or complex issue of State law”; (2) “the claim substantially predominates over the claim or  
 20 claims over which the district court has original jurisdiction”; (3) the district court has dismissed all  
 21 claims over which it has original jurisdiction”; or (4) “in exceptional circumstances,” where “there are  
 22 other compelling reasons for declining jurisdiction”).

23 a. As his First Cause of Action, Plaintiff alleges Disability  
 24 Discrimination/Harassment under 42 U.S.C. § 12101 *et seq.* and NRS 613.330. (Compl.  
 25 ¶¶ 38–47.) To the extent the claim arises under 42 U.S.C. § 12101 *et seq.*, this Court has  
 26 federal question jurisdiction over the First Cause of Action because it arises “under the . . .  
 27 laws . . . of the United States.” *See* 28 U.S.C. § 1331. To the extent the claim arises under  
 28 Nevada law, this Court has supplemental jurisdiction because the allegations supporting the

1 state-law claim are identical to those supporting the federal claim. *See Bahrapour*, 356 F.3d  
 2 at 978 (explaining that supplemental jurisdiction exists when state- and federal-law claims  
 3 “share[ ] a ‘common nucleus of operative fact’”) (citations and internal quotation marks  
 4 omitted).

5 b. As his Second Cause of Action, Plaintiff alleges Retaliation under 42 U.S.C.  
 6 §§ 12101 *et seq.* and 12203 and NRS 613.340. (Compl. ¶¶ 48–57.) To the extent the claim  
 7 arises under 42 U.S.C. §§ 12101 *et seq.* and 12203, this Court has federal question jurisdiction  
 8 over the Second Cause of Action because it arises “under the . . . laws . . . of the United States.”  
 9 *See* 28 U.S.C. § 1331. To the extent the claim arises under Nevada law, this Court has  
 10 supplemental jurisdiction because the allegations supporting the state-law claim are identical  
 11 to those supporting the federal claim. *See Bahrapour*, 356 F.3d at 978 (explaining that  
 12 supplemental jurisdiction exists when state- and federal-law claims “share[ ] a ‘common  
 13 nucleus of operative fact’”) (citations and internal quotation marks omitted).

14 c. As his Third Cause of Action, Plaintiff alleges Negligent Hiring, Training, and  
 15 Supervision. (Compl. ¶¶ 58–64.) In support, Plaintiff alleges that Alliance “fail[ed] to  
 16 adequately train and supervise their employees by with [sic] lawful policies and procedures of  
 17 discrimination, harassment, and retaliation,” and “hir[ed] individuals with a propensity  
 18 towards committing unlawful acts” related to such policies and procedures. (Compl. ¶¶ 60–  
 19 61.) This Court has supplemental jurisdiction over the Third Cause of Action because the  
 20 claim shares a “common nucleus of operative fact” with Plaintiff’s federal claims for disability  
 21 discrimination, harassment, and retaliation, and there are no facts alleged in the Complaint that  
 22 would permit discretion to decline supplemental jurisdiction. *See Smith v. K-Mart Corp.*, 899  
 23 F. Supp. 503, 506 (E.D. Wash. 1995) (refusing to remand state-law claims of negligence and  
 24 negligent supervision/retention based on alleged age discrimination, notwithstanding that such  
 25 claims might “require a showing of duty and breach of duty that goes beyond what is necessary  
 26 to establish the federal claims”). Moreover, given that Plaintiff asserts his Third Cause of  
 27 Action based on the same alleged facts and circumstances as his federal claims, litigating the  
 28 claims in the same action would advance the goals of efficiency and judicial economy by

1 ensuring that those facts and circumstances are not litigated twice in separate actions. *See Ga.-*  
 2 *Pac. v. OfficeMax Inc.*, Case No. 12-cv-02797-WHO, 2014 WL 2860267, \*6 (N.D. Cal. June  
 3 23, 2014) (observing that the purpose of supplemental jurisdiction is to “promote judicial  
 4 economy” by avoiding “duplicative and fragmented litigation”).

5 d. As his Fourth Cause of Action, Plaintiff alleges Luring under False Pretenses  
 6 under NRS 613.010. (Compl. ¶¶ 65–70.) In support, Plaintiff alleges that Alliance enticed  
 7 him to become employed by representing that it would provide a “work environment that  
 8 would be conducive” to his putative disability, but instead “provided an environment that  
 9 contributed to an exacerbation” of that disability. (Compl. ¶¶ 66–68.) This Court has  
 10 supplemental jurisdiction over the Fourth Cause of Action because the claim shares a “common  
 11 nucleus of operative fact” with Plaintiff’s federal claims for disability discrimination,  
 12 harassment, and retaliation, and there are no facts alleged in the Complaint that would permit  
 13 discretion to decline supplemental jurisdiction. *See Executive Software*, 24 F.3d at 1556  
 14 (explaining that the exercise of supplemental jurisdiction under section 1367(a) is mandatory  
 15 unless there are facts presented supporting one of the grounds for the discretionary decline of  
 16 jurisdiction under section 1367(c)). Moreover, given that Plaintiff asserts his Fourth Cause of  
 17 Action based on the same alleged facts and circumstances as his federal claims, litigating the  
 18 claims in the same action would advance the goals of efficiency and judicial economy by  
 19 ensuring that those facts and circumstances are not litigated twice in separate actions. *See Ga.-*  
 20 *Pac. v. OfficeMax Inc.*, Case No. 12-cv-02797-WHO, 2014 WL 2860267, \*6 (N.D. Cal. June  
 21 23, 2014) (observing that the purpose of supplemental jurisdiction is to “promote judicial  
 22 economy” by avoiding “duplicative and fragmented litigation”).

23 5. This Court also has original jurisdiction over Plaintiff’s claims under 28 U.S.C. § 1332  
 24 (diversity) because the action is between citizens of different states, and the matter in controversy  
 25 exceeds \$75,000.00, exclusive of interest and costs.

26 a. Plaintiff alleges in his Complaint that he “is . . . an individual residing in Clark  
 27 County, Nevada.” (Compl. ¶ 6). He is therefore a citizen of Nevada. *See Mondragon v.*  
 28 *Capital One Auto Fin.*, 736 F.3d 880, 885 (9th Cir. 2013) (“[N]umerous courts treat a person’s

1 residence as prima facie evidence of the person's domicile [for purposes of determining an  
2 individual's citizenship under 28 U.S.C. § 1332].”) (citing *Anderson v. Wyatt*, 138 U.S. 694,  
3 706 (1891)).

4 b. Plaintiff correctly alleges in his Complaint that Alliance is a citizen of a state  
5 other than Nevada. (Compl. ¶ 7.)<sup>1</sup>

6 c. Plaintiff's Complaint does not specify the precise amount he seeks to recover  
7 in this action, except to assert that it exceeds \$15,000.00. (Compl. at 8.) Where removal is  
8 based on diversity of citizenship and the initial pleading seeks a money judgment but does not  
9 demand a specific sum, “the notice of removal may assert the amount in controversy,” 28  
10 U.S.C. § 1446(c)(2), and a removing defendant “need include only a plausible allegation that  
11 the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin*  
12 *Operating Co. v. Owens*, 574 U.S. 81, 89 (2014). Here, the amount in controversy exceeds  
13 \$75,000 for the reasons stated in subparagraphs (d) through (g):

14 d. Plaintiff seeks the following types of monetary relief by virtue of his Complaint,  
15 among other types: (1) general damages in excess of \$15,000; (2) special damages; (3) punitive  
16 damages; and (4) attorneys' fees and costs. (Compl. at 8.)

17 e. It is eminently reasonable to expect that the sum at stake in this litigation is in  
18 excess of \$75,000.00 based solely on Plaintiff's demand for general and special damages. A  
19 review of jury verdicts on disability discrimination claims in Nevada federal and state courts  
20 from the last 15 years reveals that juries have rendered compensatory damages awards as high  
21 as \$627,916. *See Beckwith v. Dillard's Dept. Stores*, Case No. A-364-772, 1997 WL 1716547  
22 (Nev. Dist. Ct. Nov. 1, 1997). The *lowest* compensatory damages award that a Nevada jury  
23 has been willing to render still fell within striking distance of the jurisdictional threshold at  
24 \$64,217. *See Reaser v. Potlatch Corp.*, Case No. A565184, 2010 WL 7058511 (Nev. Dist. Ct.  
25 Mar. 23, 2010). Notably, the plaintiff in *Reaser* also obtained a punitive damages award of  
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27 <sup>1</sup> Although Plaintiff correctly alleges that Alliance is not a citizen of Nevada, he erroneously states  
28 that Alliance is incorporated under the laws of Delaware. In fact, Alliance is a limited liability  
company organized under the laws of Arizona, whose principal place of business is in Arizona.

1       \$35,000, bringing her total award to \$99,217. *See id.* Finally, the median compensatory  
2       damages award in a disability discrimination case easily surpassed the jurisdictional threshold  
3       at \$92,786. *See Brinson v. Rancho Haven Property Owners Assoc'n*, CV07-01636, 2009 WL  
4       8378721 (Nev. Dist. Ct. Jan. 15, 2009).

5             f.       Under the Americans with Disabilities Act (the “ADA”), punitive damages are  
6       limited by statute to \$50,000 for employers with between 15 and 100 employees, and caps  
7       increase for employers with 101 employees or more. 42 U.S.C. § 1981a(b)(3). Accordingly,  
8       even assuming the lowest cap applies, Plaintiff’s request for punitive damages puts an  
9       additional \$50,000 at stake in this litigation.

10            g.       Attorney fees incurred before and after removal are also included within the  
11       calculation of the amount in controversy, if the plaintiff claims the fees and they are allowed  
12       by law. *See Fritsch v. Swift Transportation Co. of Arizona LLC*, 899 F.3d 785, 794 (9th Cir.  
13       2018). The ADA provides that a court in its discretion may allow a reasonable attorney fee to  
14       the prevailing party. *See* 42 U.S.C. § 12205. A lodestar analysis would govern the calculation  
15       of any potential attorney fee award. In *Bell v. VF Jeanswear LP*, the Ninth Circuit reviewed  
16       an attorney fee award in excess of \$1 million based on an hourly rate of \$510. *See* 819 F.  
17       Appx. 531, 534 (2020). Rather than decreasing the award, the Ninth Circuit remanded with  
18       instructions to *increase* it. *See id.* 819 F. Appx. at 534–35. Here, based on the conservative  
19       assumptions that Plaintiff’s counsel will devote at least 100 hours of work to this matter at an  
20       hourly rate of \$250, Plaintiff, if successful, would stand to obtain an attorney fee award of  
21       \$25,000.

22            6.       Venue is proper in this Court as this is the court for the district and division embracing  
23       the place where the action is pending in state court. *See* 28 U.S.C. §§ 108, 1441(a).

24            7.       No other defendants are required to join this Notice of Removal.

25            8.       Alliance will contemporaneously provide written notice of this removal to all adverse  
26       parties in accordance with 28 U.S.C. § 1446(d). A copy of that notice is attached here as **Exhibit 4**.

27            9.       Alliance will also contemporaneously provide notice of removal of the action with the  
28       Eighth Judicial District Court in and for Clark County, Nevada, in accordance with 28 U.S.C.

1 § 1446(d). A copy of that notice is attached as **Exhibit 5**.

2 10. Alliance has attached all pleadings, process, and orders that it has received in this  
3 action. Alliance has received no other process, pleadings, or orders other than those attached to this  
4 Notice of Removal.

5 WHEREFORE, Alliance prays that the above-referenced action now pending against it in the  
6 Eighth Judicial District Court in and for Clark County, Nevada, be removed therefrom to this Court.

7 Dated: February 19, 2021

Respectfully submitted,

9 /s/ Neil C. Baker

10 Z. KATHRYN BRANSON, ESQ.

11 NEIL C. BAKER, ESQ.

LITTLER MENDELSON, P.C.

12 Attorneys for Defendant

13 ALLIANCE RESIDENTIAL COMPANY, LLC  
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**PROOF OF SERVICE**

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169-5937. On February 19, 2021, I served the within document(s):

**NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION FROM STATE COURT**

☒ By CM/ECF Filing – Pursuant to FRCP 5(b)(3) and LR 5-4, the above-referenced document was electronically filed and served upon the parties listed below through the Court’s Case Management and Electronic Case Filing (CM/ECF) system:

Steven H. Burke, Esq.  
Law Office of Steven H. Burke, LLC  
d.b.a. The 808 Firm  
9205 W. Russell Road  
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Las Vegas, NV 89148  
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Please note due to COVID-19, our offices are working remotely. As such hard copy will not be mailed. Please contact me immediately if alternative service needs to be arranged. Thank you.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 19, 2021, at Las Vegas, Nevada.

/s/ Ann Koorndyk  
Ann Koorndyk